

An Example of the Importance of Regulatory Flexibility for Small Business

Lizzy's Ice Cream Parlor: A Case for Common Sense Regulation

Under the Massachusetts Food Protection Program (Program), within state Department of Public Health (MDPH), businesses transporting frozen and/or refrigerated products are required to purchase or lease a mechanically refrigerated vehicle. (105 CMR 561.000) This is a cost of approximately \$50,000 in one time expenses and several thousands of dollars per year in operating costs.

Nick Pappas decided to leave the corporate world and open Lizzy's Ice Cream Parlor in Waltham, Massachusetts. Lizzy's home-made "super premium" ice cream was a hit and Nick eventually decided to sell his product through supermarkets around Greater Boston. Nick however, was unable to afford a mechanically refrigerated vehicle and would only be making a small number of deliveries. Alternatively, he developed a system to operate a refrigerator unit on his own truck using the truck's existing power system. After diligent research Nick determined that his approach was equally effective and would save him thousands of dollars.

Nick was unable to gain approval for his method from MDPH. Nick's greatest frustration was not only that his evidence was ignored, but also that there appeared to be no rational or scientific basis for the standards required by the agency. He found no studies justifying the regulation and no facts of any citizens sickened by ingesting improperly refrigerated ice cream.

MDPH conducted hearings on updating their frozen dessert regulations and Nick, as well as other small businesses, used the opportunity to voice concerns about the adverse impact of the rule on their businesses. As a result of the hearing MDPH revised the regulations to allow any person wanting to use their own method for transporting frozen or refrigerated products to apply for a variance so long as the person could explain how safe temperatures would be maintained. Allowing Nick, and other small businesses affected by the rule, to present alternatives to the rule saved small entities approximately \$50,000 each for a new vehicle plus the annual insurance and operating costs of a new truck.

Although Mass does not require any agency to conduct a review or analysis of the impact of regulations on small business, DPH decided to do so as a matter of good government. Other agencies, as well as small businesses, would benefit greatly by implementing a similar process. This can be accomplished by enacting a strong regulatory flexibility law.

Under a successful regulatory flexibility scheme agencies are required to analyze the economic impact of proposed rules on small business and to consider alternative methods that would lessen the burden on small business while accomplishing the agency's objective. Nick's story validates a key element of regulatory flexibility which is the requirement that agencies review existing regulations periodically to determine whether they should be continued without change or should be amended or rescinded to minimize the economic impact of the rule on small businesses. Choosing a less burdensome alternative for small entities can be achieved without compromising the health, safety and welfare of citizens.